692 Hambly and Childs seem to suggest that any case might be referred to the
527 chief for his decision: "Even a slave used to have rights of appeal to the king if he were starved or beaten without cause".(1) Neither describes the composition of the courts or the mechanism of appeal.

Legal procedure

695 Childs writes rather obscurely "Cases might be settled by ordeal or by decision of the king, and there was therefore room for appeal and retrial".(2)

One kind of ordeal, the *ombulungu* or poison ordeal, is described by Hambly:(3) It was used (only?) when the accused was thought to have committed murder by poison or sorcery. (If weapons were used, the accuser, usually a relative of the deceased, had the right to kill the murderer with the same kind of weapon.) If a woman were accused in this way, her son or brother would take her place in the poison ordeal.

The complainant in a suit is called *ombile*, the defendant *ovilue*, and the witness *uvangi*. Cushman states that no evidence is ever ruled out of court, and that each witness is required to give a complete account of all his dealings with the persons concerned in the case, so that the court may know on which side he is likely to be prejudiced.(4) Hambly(5) adds that formerly a witness had to make recompense to the man about whom he had told a lie, and probably received a beating as well. According to Cushman an Umbundu court may find that both parties are to blame in a case, and may fine or penalise both according to the degree of guilt. "If the chief is not satisfied, he simply gets up and leaves the court circle. This indicates that the evidence has not been satisfactory and more must be presented."(6)

672 In the absence of the delinquent, responsibility for crime was formerly transferred to a relative. If a thief escaped, responsibility would rest with a brother, a father, or a son. The mother's brother was often held responsible for the misdeeds of his sister's children, and would be expected to pay their debts.(7)

Punishments

685 A thief was punished by a beating and a fine paid to the persons from whom he had stolen.(8) An habitual thief was sold into slavery. He might be redeemed, but only if the authorities considered his reformation complete.(9) Murder was punishable by death, although this penalty might
682 be avoided by a heavy fine paid to the relatives, usually the mother,
684 mother's brother, or sister's son of the deceased. If the victim were of the royal family, the murderer might be put to death after the payment of the fine. The punishment for women murderers was the same as for men.(10) In adultery the woman was not punished, but a man was punished in the same way as a murderer, i.e. by death or a heavy fine. (Hambly gives the fine

(1) Hambly, op.cit., p.201.
(2) 1949, p.21.
(3) op.cit., p.203.
(4) 1944, pp.38-9.
(5) op.cit., p.201.
(6) 1944, p.39.
(7) Hambly, op.cit., p.201.
(8) Ibid., p.202.
(9) Cushman, 1944, p.39.
(10) Hambly, op.cit., pp.202-3.

for murder as two oxen and two slaves; for adultery, two oxen, a pig, and a slave.) Today a man who has committed adultery sometimes takes the woman and all children under three years of age, but this is for the husband to decide. An adulterer with one of the chief's wives was castrated but not killed, and the castration might be compounded for a high fine, while he, his sisters, and the sons of his sisters would become slaves of the chief.(1) Hambly states finally that "Criminal law did not distinguish between responsibility for intentional and unintentional offences."(2)

There is no information regarding the kinds of cases tried or the punishments given in the courts of village headmen or sub-chiefs today.

INHERITANCE

It has been noted above that moveable property is inherited in the maternal line, land in the paternal line.(3) The eldest brother of the deceased's mother has the first claim and is responsible for settling disputes. He may distribute the property to the mother of the deceased, the maternal grandfather, or to a brother of the deceased, but is not compelled to do this. Women never inherit cattle or land, although the sisters of a deceased woman usually receive most of her household utensils (the rest belong to her husband). A widow goes to the house of (? marries) the eldest brother of the deceased or her own maternal uncle, or she may return to her father's village. Apparently her children accompany her, although one would expect them to go to her brother.(4)

DIVORCE

Divorce appears to be infrequent; grounds for divorce are many, but difficulties are often overcome by a compromise between the two kin groups concerned. Causes for dissatisfaction on the part of a husband include his wife's incompetence, dishonesty, physical weakness, or infidelity (in the last case today a fine from the adulterer is usually accepted and the marriage continues). Barrenness is not a ground for divorce; usually the husband takes a second wife, but the first maintains her position as head wife. Sterility in the male is sometimes suspected, in which case the husband may try another girl, with his wife's consent, or the woman another man. A woman may divorce a man if he is impotent (not sterile), or if he ill-treats her, but not because he is unfaithful. If for any of these reasons the woman returns to her family, the latter are expected to return the marriage payment, although they may wait until another suitor appears who will pay the deserted husband. Whether the initiative in divorce is taken by the woman or the man, the marriage is not annulled until a renunciatory ceremony has been carried out by the husband, the wife, and the wife's father, in the presence of the village headman. The husband receives from his wife's father a roll of tobacco and a pig, and then places leaves(5) and palm oil on his wife's back; he then slaps his wife's back saying "It is finished".

(1) Hambly, op.cit., p.203. (2) Loc.cit.
(3) See above, p.18, and Childs, 1949, p.44.
(4) Hambly, (2) 1934, p.199.
(5) The leaf used is of the apu tree; the same leaf is tied to the pole of the etambo of a new village, as a sign of divorce from the old site. (Childs, 1949, p.38; this is the only context in which Childs mentions divorce.)

613 *mai* (or *oluina*) mean "family of my mother." These terms seem to indicate a bilateral rather than a unilateral lineage. Inquiry did not show that there were totems for the mother's or the father's people, or that marriage into any particular local group was com-
631 manded or enjoined. A village is a unit under the administration of a chief (*sekulu*) and as such is part of a large group of villages forming a kingdom ruled by a king (*osoma*), but such village units are concerned with government and warfare, not with exogamy.

613 In tracing descent an Ocimbundu gives the names of relatives of
565 both the father and mother, but commoners are unlikely to know the names of their relatives beyond the grandparent class. The children of a king were at one time able to recite many generations
[582] of ancestors along both parental lines. But if the king had married a commoner, as he was allowed to do after choosing his first wife from the royal line, the children knew only the genealogy of their father. This is obvious since the commoner mother would not be likely to know her line of descent. The son of a village chief (*sekulu*) may marry a commoner, but, according to Ngonga, the *sekulu*, his father, "would have a very good look at her."

582 Ngonga had not heard of the marriage of brothers and sisters,
565 not even in the royal family; the idea of such a union was new and repulsive to him. In Umbundu society there would be no necessity for such a marriage as that of brother and sister or other close relative, because members of a royal family of one part of the country could intermarry with members of a royal family in some area far away. There might, for example, be marriages between the royal families of Bailundu and Ngalangi, which are two principal kingships of the Ovimbundu confederacy.

835 When asked what would be the fate of a man who committed
● 684 incest with his blood daughter or uterine sister, Ngonga said he would be killed by his brother or by his mother's brother. If he escaped he would have to go far away so that his people could never see him again. If a fine were accepted for incest, the culprit would have to pay his own kin "because he had shamed them."

601 Table A, Ngonga's Own Generation, calls attention to a plurality of terms for brother and sister according to the relative ages of the speaker and the person addressed. Moreover, there is a term for direct address and another which is used when speaking of a brother or sister.

Ngonga was questioned with regard to forms of address for his brothers and sisters other than the children of his uterine mother.

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Social Life

fines were in their hands. If he murdered one of the royal family 682
he was killed after he had paid the fine." The punishment of a woman [562]
who has committed a murder is the same as that for a man.

Ombulungu is the name given to trial by poison ordeal. The 695
medicine-man holds out both his hands, in each of which there is a potato, only one of which is poisoned. The accused man says, "If I have done this thing, this potato will be poison for me. If I have not done this thing, this potato will be food for me." The complainant says, "If this is not the man who poisoned my brother, this potato will be poison for me." They sit in front of the medicine-man, and each must take the potato in the hand opposite to him. The poison makes a man very sick. His mouth swells so that he cannot speak.

When a woman was accused of murder her son or her brother [562]
would take her place in the poison ordeal. A boy of fifteen years of age would have the same treatment as a man. "I don't think a girl would kill anybody. I never heard about it," said Ngonga. It appears that resort was made to a medicine-man when the accused was thought to have committed murder by poison or magic. If the murderer used weapons, the accuser, who was usually a relative, was entitled to kill him with the kind of weapon used for the crime.

The penalties for adultery were the same as those for murder. 684
The woman appears to have escaped punishment, except that "her husband would not have her any more." The male adulterer had to pay the husband; if he could not pay or escape, the husband had the right to kill him. In the old days the price for adultery was two oxen, a pig, and a slave. At the present day a man who has committed adultery and made payment, possibly takes the woman and all children under three years of age. The husband has the right to decide whether the adulterer has the privilege of taking the woman and her children. An adulterer with one of the king's wives was castrated but not killed. He might, instead of mutilation, pay a very [567]
high price, while he himself along with his sisters and the sons of his sisters, would become slaves of the king. If a man could not pay, he might be sold as a slave in order to provide money for the fine. [671]
Criminal law did not distinguish between responsibility for intentional and unintentional offences.

It is very difficult to say how much of the old law survives. One 681
feels that underneath the ostensible Portuguese rule there is an active 177
native life that is resisting subjugation.

Only two years ago Ngonga paid an ox to prevent one of his female 686
relatives from being pawned. Within the past ten years Ngonga has

3: Hambly E-5 (1929-1930) 1934 FP13 Mbundu FP13

Nevertheless, the idea of crime is well developed, and there are many actions which are punishable because they contravene the laws of the tribe. Adultery is a crime on a par with theft; but adultery is not a sin. Suku, the supreme being, issues no commands. Ancestral spirits are concerned only with sacrifice and homage to themselves. There is no theory of punishment or reward in a future life according to conduct on earth.

Perhaps *ekandu* is the only word which could express sin. An Ocimbundu would say that murder is the chief *ekandu*. "*Ekandu* is to make anything have a bad time." To send a stranger along the wrong path is *ekandu*. It would be *ekandu* to throw an animal on the fire. It is *ekandu* if a man is guilty of fornication with his wife's sister. Such an act is said to be *ekandu* only if the wife's sister is visiting the house of the culprit. The male defaulter is regarded as blameless, but the people of the village from which the wife's sister came would be expected to pay the wronged wife. Sexual offences against young children are very serious. In fact the death penalty or banishment would be inflicted, and such offences are given by the Ovimbundu as examples of *ekandu*.

This subject of moral responsibility leads naturally into the question of laws and penalties. There are among the Ovimbundu well-defined moral codes and clearly formulated tribal laws which have been described in chapter VI.

FUNERAL RITES

COMMONERS

In the village of Cilema in the district of Elende I witnessed the funeral rites of a boy aged twelve years. When a few hundred yards from the village, I heard sounds of drumming coming from a secluded place in the tall grass. On reaching the clearing four drummers were seen, each of whom held a tubular drum between his legs; these drums were of different lengths. The man on the left of the drumming squad played with an up and down movement of his left hand only, to provide the bass tone. Other drummers played with the palms and fingers of both hands. Thirty feet from the drummers stood a group of women who always started the rhythm for the drums by clapping their hands, and the hand-clapping continued as an accompaniment for the drums.

Near-by, men were seated on the ground, while a large number of women walked about or sat on the ground chatting and smoking their pipes. The general impression was not one of solemnity.

6:Edwards E-5 (1955-1956)1962
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groups began to make the socio-geographical function of these marriages no longer the renewal of ties with distant kin but the holding together of the local community no longer held in the firm framework of the old local organization.

Several explanations can therefore be given for preferential marriages. From the point of view of the man making such a marriage there are economic advantages in the probably lower bridewealth and, formerly, the avoidance of the fine payable on the death of a non-related wife. The marriage itself is more likely to be stable, and a man's children are more likely to stay with him if they have other kin close at hand. The local mobility of the Ovimbundu to some extent assists marital stability, since a bride arriving in a village may well find there other kin than her husband and his relatives, and may find such relatives helpful to her.

From an observer's view-point, preferential marriage is important on the village and neighbourhood level by multiplying social links within them. Its importance for the kinship system lies in its giving significance to the distinction between kin and non-kin and in keeping kinsfolk together without either localization of kinship groups or villages with strong headmen.

2. *Husband, Wife, and Household*

Traditionally the Ovimbundu lived chastely till marriage, and there existed sanctions in the form of fines, alterations in the marriage ceremony, and mystically caused illness, against unchastity.[7] The force of these sanctions has weakened in modern times;[8] however, many Ovimbundu remain chaste until marriage.

The age of marriage is about twenty-two for a man, and about eighteen for a girl. In Gumba there is some tendency to marry younger at about 16–17. Villagers in Epalanga ascribed this to contract labour, that is, to the necessity of a contract labourer having to have someone to cook for him. This is a point which will be considered later in reference to the wife's services to her

[7] Hastings, p. 121. Childs, p. 119.

[8] Childs, loc. cit., and fieldwork.

6:Edwards E-5 (1955-1956)1962
FP13 Mbundu FP13

patrilateral cross-cousin, the reason for this being apparently to enable him to look after the children. Other marriages of a widow with her dead husband's kin were and are forbidden under pain of mystical sanctions. Thus, marriage with one's dead wife's sister would lead to the latter's death through her sister's spirit. Illness or death was suggested as the penalty for marriage with a mother's brother's widow, although I know of two cases of such marriages happening. The reason for this prohibition against any marriage by a widow or widower with the kin of a deceased spouse is given as being that it is wrong to mix the blood.

Adultery is subject to mystical sanctions in the illness called *ondjamba* which seems to involve swelling of the legs. This afflicts not the guilty party but the other spouse (whether husband or wife) and the children.[18] I was also told by some informants that this illness affected the other spouse if there were no children; if there were children adultery would endanger their lives and the life of the innocent spouse. Some people do not believe in this nowadays; however the line between believers and non-believers cannot be equalled with that between pagan and Christian or old and young. It is of course impossible to say how frequent adultery is in any community. Informants complain of the frequency of adultery. It should be noted that public opinion seems to condemn it strongly, and men who have discovered their wives being unfaithful usually send them away. The adulterer has to pay a heavy fine, assuming that he does not move away. The usual figure given for a fine was two cattle and a big pig, though in practice the fine would be smaller; in one case in 1948 it was 200 escudos (£2 10s.) and a pig. The word for the man who commits adultery with one's wife, or who marries one's ex-wife, is *tjikwelume* (he of jealousy) a word already referred to in the account of the kinship terminology. There is a rule against eating with him and if one goes to his funeral it is said that one's own death will soon follow. There is a similar rule against a woman eating with the wife of a man with whom she has committed adultery.

[18] For a detailed discussion of this concept, see Hastings, pp. 111–23. It is not nowadays believed that it afflicts people guilty of pre-marital sexual relations.

6:Edwards E-5 (1955-1956)1962
FP13 Mbundu FP13

question of Kapapelo's intention towards Nahoka, but criticized Kapapelo for reopening his quarrel with Sapapula. Kapapelo (who did not strike me as particularly intelligent) was wandering about more or less ignoring the criticisms which had been made of him, which greatly annoyed the assembly. At length, Kapapelo, urged to speak by Lusase, did so.

Kapapelo stated that he had committed adultery with Nahoka, Sapapula's wife, and asked to be fined for adultery. This created a fresh uproar. Nahoka got up and said that the question was within the competence of Lusase since he and not Kafelo was now the chief. She denied that she had committed adultery. As evidence against this, she pointed out that Kapapelo's wife had visited her house to eat mush, and that Kapapelo's conduct when he came to Sapapula's kitchen showed that she had not committed adultery. Antonio Kasoma (see List II, p. 55) said that it was necessary to decide how much Kapapelo should pay.

Kapapelo's wife joined in to support her husband's confession, saying that Kapapelo had given Nahoka soap. Sapapula declared that Kapapelo was worthless, and had received everything he had from Sapapula. Some people called on Kapapelo to work sorcery. Kafelo suggested that Kapapelo should pay 150 escudos (£1. 17s. 6d.). The meeting now broke up, some people saying that the post should be informed and that Kapapelo had (illicit) rum in his house. One of the Menga men said that in the past even attempted seductions were punished. Sapapula demanded a payment of 500 escudos or a big pig, for Kapapelo's offences of not showing respect to Sapapula, and attempting adultery. He seemed more inclined, however, to take the case to the post, since (he claimed) Kapapelo was threatening to kill him. Kapapelo refused to pay.

The argument now swirled round, Kapapelo wavering between paying and not paying, Sapapula wavering between going to the post and being ready to accept a fine. Kafelo and Lusase both favoured a payment. People said that Guilherme was responsible for this. Paulo, Kusumula and Ndjoleya all urged Kapapelo to pay. Sapapula had now moved off, and was eventually followed by everybody else. Various wrangles continued over the question of paying a fine or having recourse